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Invested in America

March 2, 2016

The Honorable Mae Flexer
The Honorable Joseph C. Serra
Co-Chairs
Aging Committee
State Capitol Building
Room 011
Hartford, CT 06106

RE: SB 265, An Act Concerning the Protection of Consumers Who Receive Investment Advice from Financial Advisors

Dear Chairpersons Flexer and Serra:

The Securities Industry and Financial Markets Association ("SIFMA")[1] is a national trade association which brings together the shared interests of hundreds of broker-dealers, banks and asset managers. Many of our members have a strong presence in Connecticut. Indeed, there are over 25,000 individuals in the state working in the securities industry and over 111,000 people employed by entities falling within the broader category of finance and insurance.

We are writing to express our concern about SB 265, as currently drafted. This bill would require a "financial advisor" to provide potential investors - prior to entering into any agreement - with a signed written statement detailing, among other things: (1) the advisor's duty of care to the investor; (2) any compensation the financial advisor expects to receive, including up-front charges, commissions, and incentives; (3) any fees related to investment products; and (4) any actual or potential conflicts of interest. This signed statement would then be updated at least annually.

We appreciate the Committee's interest in protecting consumers. We, however, respectfully suggest that the legislation does not serve that purpose while raising additional issues and concerns.

While we are still digesting the bill, which was introduced last week, we encourage you to consider some preliminary issues:

1. Federal Activity on a Fiduciary Standard is Forthcoming. SIFMA has supported a Securities and Exchange Commission (SEC) – developed uniform fiduciary standard for broker-dealers and investment advisers since 2009. Congress subsequently authorized the SEC to establish such a standard under Section 913 of the Dodd-Frank Act. SIFMA believes that action by the SEC is the appropriate course and is consistent with Congressional intent to avoid a patchwork of conflicting and confusing regulations – across regulators and states – that has the potential to harm

[1] SIFMA is the voice of the U.S. securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over $2.4 trillion for businesses and municipalities in the U.S., serving retail clients with over $16 trillion in assets and managing more than $62 trillion in assets for individual and institutional clients including mutual funds and retirement plans. For more information, visit http://www.sifma.org.

those investors it was intended to help. SEC Chair Mary Jo White has expressed strong interest in such a standard.

At the same time, after a lengthy development period, the Department of Labor is finalizing a proposed rule that would expand the definition of fiduciary under ERISA. On January 28, 2016, DOL sent the rule to OMB for review, which could take up to 90 days.

It is certainly possible that the two federal agencies' rules will conflict. To avoid further conflict and confusion, we would encourage you to not move forward with a fiduciary disclosure proposal at least until the shifting federal landscape has settled.

2. State Disclosure Forms Are Likely Pre-Empted Under Federal Securities Law. Under the National Securities Markets Improvement Act of 1996 (NSMIA), states are prevented from enacting laws and regulations relating to the making and keeping of records "that differ from, or are in addition to, the requirements in those areas established under [the Exchange Act]." The primary purpose of this preemption is to ensure uniform and consistent record-keeping obligations – as established by the SEC – across all 50 states. SB 265 would impose new record-making and record-keeping obligations, including the creation and retention of disclosure forms for prospective clients and the annual creation and retention of disclosure forms for existing clients. We would encourage you to consider the pre-emption ramifications before proceeding with the bill.

3. Bill raises definitional questions. The bill applies to "financial advisors" who render "investment advice." Neither term is defined. "Fiduciary duty" is defined, but it is not clear where this definition came from, or whether it sufficiently tracks federal best interest of the client language. The legislation also requires advisors to disclose "actual or potential conflicts of interest" without defining such. Does the concern go beyond compensation, and if so, how? Is a buy and hold investor better served by a one-time transaction fee typical in brokerage settings or an ongoing percentage of investment fee typical in investment adviser settings? These and other issues would need to be addressed before moving forward.

4. It is difficult to disclose duties, conflicts and compensation to prospective clients. How can there be a duty of care if the parties don't even know if they want to do business together? How can compensation and conflicts be discussed before investment products are selected? To protect oneself, disclosure would then likely be over-inclusive boilerplate which does not serve its intended purpose.

We appreciate your willingness to consider our concerns. Please do not hesitate to contact me at 212-313-1311 or SIFMA's lobbyist Pat McCabe at 860-293-2581 with any questions.

Sincerely,

Kim Chamberlain

Kim Chamberlain
Managing Director and Associate General Counsel
State Government Affairs

Cc: Aging Committee Members